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**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

IN THE MATTER OF CLAIMS AGAINST THE
DEALER BOND OF B & M AUTO SALES &
SERVICE

Case No. DOT-98-344

FINAL DECISION

On September 3, 1998, Janelle Gorenc filed a claim with the Wisconsin Department of Transportation against the motor vehicle dealer bond of B & M Auto Sales & Service. The claim along with the documents gathered by the Department in its investigation of the claim was referred to the Division of Hearings and Appeals for hearing.

An informal telephone hearing was conducted on March 15, 1999. Mark J. Kaiser, Administrative Law Judge, presiding. Participating in the telephone hearing were the claimant, Janelle Gorenc, Philip Owens, on behalf of Fidelity and Deposit Company of Maryland, and Department of Transportation Dealer Investigator Joseph Paulick. No response to the Notice of Telephone Hearing was received from anyone on behalf of B & M Auto Sales & Service. At the scheduled time for the telephone hearing an attempt was made to contact Michael Moser, owner of B & M Auto Sales & Service, at both the dealership and his home telephone numbers. Mr. Moser was unavailable. The Administrative Law Judge issued a Preliminary Determination on March 30, 1999. No objections to the Preliminary Determination were received. Pursuant to sec. Trans 140.26(5)(d), Wis. Adm. Code, the Preliminary Determination is adopted as the final decision of the Department of Transportation.

FINDINGS OF FACT

1. B & M Auto Sales & Service, (dealer) is a used motor vehicle dealer licensed by the Wisconsin Department of Transportation pursuant to sec. 218.01, Stats. The dealer's facilities are located at 4270 North 76th Street, Milwaukee, Wisconsin.
2. The dealer had a surety bond in force from September 11, 1992 to September 14, 1998 (Bond #8069350 from Fidelity and Deposit Company of Maryland)
3. On April 23, 1998, Janelle Gorenc purchased a 1987 Honda Civic, Vehicle Identification Number 1HGEC463XHA082316, from B & M Auto Sales & Service for \$1600. The vehicle was purchased "AS IS" from the dealer.

4. Janelle Gorenc's mother is Debra Valdovinos. Ms. Gorenc and Ms. Valdovinos visited the B & M Auto Sales & Service lot at the suggestion of James Black, a co-worker of Ms. Valdovinos. At the B & M sales lot, James Black showed Ms. Gorenc the vehicle, rode along with her on a test drive of the vehicle, and negotiated the sale price of the vehicle. Based on these activities, James Black was acting as a motor vehicle salesperson for this transaction. James Black does not have a motor vehicle salesperson license.

5. On May 2, 1998, Ms. Gorenc brought the vehicle back to the dealer for an oil change. On May 16, 1998 the engine of the vehicle seized. Ms. Gorenc and the dealer split the cost of installing another used engine in the vehicle. Ms. Gorenc's share of the engine replacement cost was \$350. On June 14, 1998 the vehicle quit running and was towed. Ms. Gorenc sold the vehicle back to the dealer for \$500 on June 17, 1998.

6. On September 3, 1998, Janelle Gorenc filed a claim against the surety bond of B & M Auto Sales & Service. The amount of the claim is \$750. The claim consists of the purchase price of \$1600 less the \$350 Ms. Gorenc paid toward the new engine and the \$500 the dealer paid to buy back the vehicle.

7. Section 218.01(2)(a), Stats., requires any person engaged in business as a salesperson to have a salesperson license issued by the Department of Transportation. A motor vehicle dealer is responsible for the licensing of a salesperson in his or her employ. James Black acting as a salesperson in this transaction is a violation of sec. 218.01(2)(a), Stats. A violation of sec. 218.01(2)(a), Stats., is, in turn a violation of secs. 218.01(3)(a)4 and/or 14, Stats.

8. Janelle Gorenc would not have purchased the vehicle from the dealer if James Black had not been acting as a salesperson for the dealership. Accordingly, Ms. Gorenc's loss was caused by the violation of secs. 218.01(3)(a)4 and/or 14, Stats.

9. Ms. Gorenc claimed a loss of \$750. It is not clear why she deducted the amount she contributed to the replacement of the engine from the amount of her claim. It seems this \$350 should have been added to her claim. On the other hand, a deduction should be made from the amount of the claim for her use of the vehicle while she owned it. A deduction for use of a vehicle is usually based on the amount of miles driven. The vehicle was more than ten years old at the time it was purchased by Ms. Gorenc. Accordingly, it was exempt from the mileage disclosure requirements of chapter Trans 154, Wis. Adm. Code. There is no record in this matter of the mileage of this vehicle at either the time Ms. Gorenc purchased the vehicle or the time she sold it back to the dealer. Therefore one can not calculate a deduction from the claim for Ms. Gorenc's use of the vehicle.

However, based on the short period of time Ms. Gorenc owned the vehicle and the fact that it was undriveable a substantial portion of the time she owned it, it is highly unlikely that a reasonable deduction for her use of the vehicle would exceed \$350. A reasonable compromise in this matter is to consider the \$350 Ms. Gorenc contributed to the cost of replacing the engine of the vehicle a sufficient payment for her use of the vehicle while she owned it. Accordingly, the loss sustained by Ms. Gorenc is determined to be \$1100, the \$1600 she paid for the vehicle less the \$500 she received when she sold it back to the dealer.

10. The claim was filed within three years of the ending date of the one-year period the Fidelity and Deposit Company of Maryland bond was in effect (September 11, 1997 to September 14, 1998).

CONCLUSIONS OF LAW

1. Janelle Gorenc's claim arose on April 23, 1998, the date she purchased the subject vehicle from B & M Auto Sales & Service. The surety bond issued to B & M Auto Sales and Service by Fidelity and Deposit Company of Maryland covers the one-year period from September 11, 1997 to September 14, 1998. The claim arose during the period covered by the surety bond

2. Ms. Gorenc filed a claim against the motor vehicle dealer bond of B & M Auto Sales and Service on September 30, 1998. The bond claim was filed within three years of the last day of the period covered by the surety bond; therefore, pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Code, the claim is timely.

3. Ms. Gorenc's loss was caused by an act of B & M Auto Sales & Service which would be grounds for suspension or revocation of its motor vehicle dealer license. Ms. Gorenc has submitted documentation to support a claim in the amount of \$1100. Pursuant to sec. Trans 140.21(1)c, Wis. Adm. Code, this claim is allowable.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by Janelle Gorenc against the motor vehicle dealer bond of B & M Auto Sales & Service, is APPROVED in the amount of \$1100 00. Fidelity and Deposit Company of Maryland shall pay Ms. Gorenc this amount for her loss attributable to the actions of B & M Auto Sales & Service.

Dated at Madison, Wisconsin, on May 3, 1999.

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By:



MARK J. KAISER
ADMINISTRATIVE LAW JUDGE